

ALEXANDER G. CALFO, SBN 152891
acalfo@kslaw.com
SUSAN V. VARGAS, SBN 177972
svargas@kslaw.com
AMY P. ZUMSTEG, SBN 260242
azumsteg@kslaw.com
KING & SPALDING LLP
633 West Fifth Street, Suite 1600
Los Angeles, CA 90071
Telephone: +1 213 443 4355
Facsimile: +1 213 443 4310

Attorneys for Defendants
MERCK & CO., INC.; MERCK SHARP
& DOHME CORP.¹; ORGANON & CO.;
and ORGANON LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES CRUZ, an individual,

Plaintiff,

vs.

MERCK & CO., INC., a New Jersey
Corporation; MERCK SHARP &
DOHME CORP., a New Jersey
Corporation; ORGANON & CO., a
Delaware Corporation; ORGANON LLC,
a Delaware Limited Liability Company;
and DOES 1-10, Inclusive,

Defendants.

Case No. 2:22-cv-02348 DMG(MAAX)

~~PROPOSED~~ **STIPULATED**
PROTECTIVE ORDER

Action Filed: March 3, 2022
Action Removed: April 7, 2022
Trial Date: June 4, 2024

¹ Merck Sharp & Dohme Corp. is now known as Merck Sharp & Dohme LLC.

1 **1. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
6 Stipulated Protective Order. The parties acknowledge that this Stipulated Protective
7 Order does not confer blanket protections on all disclosures or responses to discovery
8 and that the protection it affords from public disclosure and use extends only to the
9 limited information or items that are entitled to confidential treatment under the
10 applicable legal principles. The parties further acknowledge, as set forth in Section 14.3
11 below, that this Stipulated Protective Order does not entitle them to file confidential
12 information under seal; Local Rule 79-5 sets forth the procedures that must be followed
13 and the standards that will be applied when a party seeks permission from the Court to
14 file material under seal.

15 **2. GOOD CAUSE STATEMENT**

16 This action is likely to involve confidential, proprietary, or private information
17 for which special protection from public disclosure and from use for any purpose other
18 than prosecution of this action is warranted. Such confidential and proprietary materials
19 and information consist of, among other things, confidential business or financial
20 information, information regarding confidential business practices, or other confidential
21 research, development, or commercial information (including information implicating
22 privacy rights of third parties), information otherwise generally unavailable to the
23 public, or which may be privileged or otherwise protected from disclosure under state
24 or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite
25 the flow of information, to facilitate the prompt resolution of disputes over
26 confidentiality of discovery materials, to adequately protect information the parties are
27 entitled to keep confidential, to ensure that the parties are permitted reasonable necessary
28 uses of such material in preparation for and in the conduct of trial, to address their

1 handling at the end of the litigation, and to serve the ends of justice, a protective order
 2 for such information is justified in this matter. It is the intent of the parties that
 3 information will not be designated as confidential for tactical reasons and that nothing
 4 be so designated without a good faith belief that it has been maintained in a confidential,
 5 non-public manner, and there is good cause why it should not be part of the public record
 6 of this case.

7 **3. DEFINITIONS**

8 3.1. Action: This pending federal lawsuit, *James Cruz v. Merck & Co., Inc., et*
 9 *al.*, Case No. 2:22-cv-02348 DMG (MAAx).

10 3.2 Challenging Party: A Party or Nonparty that challenges the designation of
 11 information or items under this Stipulated Protective Order.

12 3.3. “CONFIDENTIAL” Information or Items: Information (regardless of how it
 13 is generated, stored or maintained) or tangible things that qualify for
 14 protection under Federal Rule of Civil Procedure 26(c), and as specified
 15 above in the Good Cause Statement.

16 3.4. Counsel: Outside Counsel of Record and In-House Counsel (as well as their
 17 support staff).

18 3.5. Designating Party: A Party or Nonparty that designates information or items
 19 that it produces in disclosures or in responses to discovery as
 20 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 21 EYES ONLY.”

22 3.6. Disclosure or Discovery Material: All items or information, regardless of the
 23 medium or manner in which it is generated, stored, or maintained (including,
 24 among other things, testimony, transcripts, and tangible things), that is
 25 produced or generated in disclosures or responses to discovery in this matter.

26 3.7. Expert: A person with specialized knowledge or experience in a matter
 27 pertinent to the litigation who has been retained by a Party or its counsel to
 28 serve as an expert witness or as a consultant in this Action.

1 3.8. “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information
2 or Items: Sensitive “CONFIDENTIAL Information or Items” (regardless of
3 how it is generated, stored or maintained) or tangible things that contain or
4 otherwise reference non-public trade secrets or other current or prospective
5 confidential research, development, commercial, or financial information, or
6 other highly sensitive data, the disclosure of which to another Party or
7 Nonparty could cause a competitive disadvantage to a Producing Party or
8 could create a substantial risk of serious harm that could not be avoided by
9 less restrictive means, including, for example, strategic planning information
10 and pricing and cost data and analyses.

11 3.9 In-House Counsel: Attorneys who are employees of a party to this Action,
12 including any attorney for Organon. In-House Counsel does not include
13 Outside Counsel of Record or any other outside counsel.

14 3.10. Nonparty: Any natural person, partnership, corporation, association, or
15 other legal entity not named as a Party to this action.

16 3.11. Outside Counsel of Record: Attorneys who are not employees of a party to
17 this Action but are retained to represent or advise a party to this Action and
18 have appeared in this Action on behalf of that party or are affiliated with or
19 contracted by a law firm which has appeared on behalf of that party, and
20 includes support staff.

21 3.12. Party: Any party to this Action, including all of its officers, directors,
22 employees, consultants, retained experts, In-House Counsel, and Outside
23 Counsel of Record (and their support staffs).

24 3.13. Producing Party: A Party or Nonparty that produces Disclosure or
25 Discovery Material in this Action.

26 3.14. Professional Vendors: Persons or entities that provide litigation support
27 services (e.g., photocopying, videotaping, translating, preparing exhibits or
28 demonstrations, and organizing, storing, or retrieving data in any form or

1 medium) and their employees and subcontractors.

2 3.15. Protected Material: Any Disclosure or Discovery Material that is
3 designated as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL –
4 ATTORNEYS' EYES ONLY."

5 3.16. Privacy Information: Any documents containing an individual's social
6 security number or taxpayer identification number (other than only the last
7 four digits thereof), an individual's birth date (other than only the year of the
8 individual's birth), the name of an individual known to be a minor (other than
9 only the minor's initials), a financial account number (other than only the last
10 four digits thereof), "Personal Data," "Personally Identifiable Information,"
11 "Sensitive Private Data," or "Nonpublic Personal Information" as these terms
12 are defined under federal or state laws, regardless of whether such
13 information has been designated as "CONFIDENTIAL" or "HIGHLY
14 CONFIDENTIAL – ATTORNEYS' EYES ONLY" (collectively "Privacy
15 Information").

16 3.17. Receiving Party: A Party that receives Disclosure or Discovery Material
17 from a Producing Party.

18 4. SCOPE

19 The protections conferred by this Stipulated Protective Order cover not only
20 Protected Material, but also (1) any information copied or extracted from Protected
21 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and
22 (3) any testimony, conversations, or presentations by Parties or their Counsel that might
23 reveal Protected Material. However, the protections conferred by this Stipulated
24 Protective Order do not cover the following information: (a) any information that is in
25 the public domain at the time of disclosure to a Receiving Party or becomes part of the
26 public domain after its disclosure to a Receiving Party as a result of publication not
27 involving a violation of this Stipulated Protective Order; and (b) any information
28 obtained by the Receiving Party from a source who obtained the information lawfully

1 and under no obligation of confidentiality to the Designating Party.

2 Any use of Protected Material at trial shall be governed by the orders of the trial
3 judge. This Stipulated Protective Order does not govern the use of Protected Material at
4 trial.

5 **5. DURATION**

6 Even after final disposition of this litigation, the confidentiality obligations
7 imposed by this Stipulated Protective Order shall remain in effect until a Designating
8 Party agrees otherwise in writing or a court order otherwise directs. Final disposition
9 shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action,
10 with or without prejudice; and (2) final judgment herein after the completion and
11 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including
12 the time limits for filing any motions or applications for extension of time pursuant to
13 applicable law. This Court shall retain jurisdiction for a period of one (1) year after the
14 conclusion of this Action to enforce the terms of the Protective Order.

15 **6. DESIGNATING PROTECTED MATERIAL**

16 **6.1. Exercise of Restraint and Care in Designating Material for Protection.**

17 Each Party or Nonparty that designates information or items for protection under
18 this Stipulated Protective Order must take care to limit any such designation to specific
19 material that qualifies under the appropriate standards. To the extent practical to do so,
20 the Designating Party must designate for protection only those parts of material,
21 documents, items, or oral or written communications that qualify so that other portions
22 of the material, documents, items, or communications for which protection is not
23 warranted are not swept unjustifiably within the ambit of this Stipulated Protective
24 Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that
26 are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*,
27 to unnecessarily encumber the case development process or to impose unnecessary
28 expenses and burdens on other parties) may expose the Designating Party to sanctions.

1 6.2. Manner and Timing of Designations.

2 Except as otherwise provided in this Stipulated Protective Order (*see, e.g.*, Section
3 6.2(a)), or as otherwise stipulated or ordered, Disclosure or Discovery Material that
4 qualifies for protection under this Stipulated Protective Order must be clearly so
5 designated before the material is disclosed or produced.

6 Designation in conformity with this Stipulated Protective Order requires the
7 following:

8 (a) For information in documentary form (*e.g.*, paper or electronic documents, but
9 excluding transcripts of depositions or other pretrial or trial proceedings), that the
10 Producing Party affix at a minimum, the legend “CONFIDENTIAL” or “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains protected
12 material or, in the case of native file production, in conformity with the Stipulated Order
13 Regarding Discovery of Documents and Electronically Stored Information. If only a
14 portion or portions of the material on a page qualifies for protection and to the extent
15 practical to do so, the Producing Party also must clearly identify the protected portion(s)
16 (*e.g.*, by making appropriate markings in the margins).

17 A Party or Nonparty that makes original documents or materials available for
18 inspection need not designate them for protection until after the inspecting Party has
19 indicated which documents or material it would like copied and produced. During the
20 inspection and before the designation, all of the material made available for inspection
21 shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After
22 the inspecting Party has identified the documents it wants copied and produced, the
23 Producing Party must determine which documents, or portions thereof, qualify for
24 protection under this Stipulated Protective Order. Then, before producing the specified
25 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL”
26 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each document or
27 page of a document that contains Protected Material. If only a portion or portions of the
28 material on a page qualifies for protection and to the extent practical to do so, the

1 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making
2 appropriate markings in the margins).

3 (b) For testimony given in depositions or in other pretrial proceedings, that all
4 deposition testimony or testimony during other pretrial proceedings shall be treated as
5 “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY” for a period of 30 days
6 from the date of receipt by Outside Counsel of Record of a final transcript during which
7 a Designating Party may identify the specific portions of testimony as to which
8 protection is sought and specify the particular level of protection being asserted. At the
9 expiration of that 30-day period, only those portions that are specifically identified will
10 qualify for protection under this Stipulated Protective Order. Alternatively, during that
11 30-day period, a Designating Party may, if appropriate, designate the entire transcript as
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” Any rough transcript that is
13 generated before receipt by Outside Counsel of Record of a final transcript also shall be
14 treated during the 30-day period as if it had been designated “HIGHLY
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise
16 agreed. After the expiration of that period, the transcript shall be treated only as actually
17 designated.

18 Each Party shall provide notice to all other Parties if it reasonably expects to
19 reference or use Protected Material at a deposition, hearing or other proceeding so that
20 the other parties can ensure that only authorized individuals who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
22 proceedings. The use of a document as an exhibit at a deposition shall not in any way
23 affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
24 ATTORNEYS’ EYES ONLY.”

25 (c) For information produced in nondocumentary form, and for any other tangible
26 items, that the Producing Party affix in a prominent place on the exterior of the container
27 or containers in which the information is stored the legend “CONFIDENTIAL” or
28 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or

portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

6.3. Inadvertent Failure to Designate.

If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Stipulated Protective Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Stipulated Protective Order.

7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7.1. Timing of Challenges.

Any Party or Nonparty may challenge a designation of confidentiality within a reasonable period of time after such designation is made by the Designating Party.

7.2. Meet and Confer.

In the event of a challenge to a designation, the Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Stipulated Protective Order. The Parties shall attempt to resolve each challenge in good faith and on an informal basis in accordance with Local Rule 37.1 et seq., and with Section 4 of Judge Audero's Procedures ("Mandatory Telephonic Conference for Discovery Disputes").² The Parties must begin the process by conferring directly (in person or by telephone) within fourteen (14) days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the

² Judge Audero's Procedures are available at <https://www.cacd.uscourts.gov/honorable-maria-audero>

1 designated material, to reconsider the circumstances, and, if no change in designation is
2 offered, to explain the basis for the chosen designation.

3 7.3. Judicial Intervention with Respect to Confidentiality Designations.

4 If the challenge cannot be resolved through the meet and confer process, the
5 Challenging Party disputing the designation may apply to the Court for a ruling that a
6 document (or category of documents) designated as Protected Material by the
7 Designating Party is not entitled to the specified level of protection. The Challenging
8 Party's motion must be filed within 21 days of the Designating Party's response, and the
9 Parties must comply with Judge Audero's Procedures.

10 7.4. Burden of Persuasion.

11 The burden of persuasion in any such challenge proceeding shall be on the
12 Challenging Party. Frivolous challenges, and those made for an improper purpose (*e.g.*,
13 to harass or impose unnecessary expenses and burdens on other parties) may expose the
14 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
15 the confidentiality designation, all parties shall continue to afford the material in
16 question the level of protection to which it is entitled under the Designating Party's
17 designation until the Court rules on the challenge.

18 **8. ACCESS TO AND USE OF PROTECTED MATERIALS**

19 8.1. Basic Principles.

20 A Receiving Party may use Protected Material that is disclosed or produced by
21 another Party or by a Nonparty in connection with this Action only for prosecuting,
22 defending, or attempting to settle this Action. Such Protected Material may be disclosed
23 only to the categories of persons and under the conditions described in this Stipulated
24 Protective Order. When the Action reaches a final disposition, a Receiving Party must
25 comply with the provisions of Section 15 below.

26 Protected Material must be stored and maintained by a Receiving Party at a
27 location and in a secure manner that ensures that access is limited to the persons
28 authorized under this Stipulated Protective Order. The recipient of any Protected

1 Material that is provided under this Stipulated Protective Order shall maintain such
2 information in a reasonably secure and safe manner that ensures access is limited to the
3 persons authorized herein, and shall further exercise the same standard of due and proper
4 care with respect to the storage, custody, use, and/or dissemination of such information
5 as the recipient would use with respect to its own material of the same or comparable
6 sensitivity, but no less than the reasonable precautions set forth in Section 15 below.

7 8.2. Disclosure of “CONFIDENTIAL” Information or Items.

8 Unless otherwise ordered by the Court or permitted in writing by the Designating
9 Party, a Receiving Party may disclose any information or item designated
10 “CONFIDENTIAL” only to:

11 (a) The Receiving Party’s Outside Counsel of Record, as well as employees of
12 said Outside Counsel of Record to whom it is reasonably necessary to disclose the
13 information for this Action;

14 (b) The officers, directors, and employees (including In-House Counsel) of the
15 Receiving Party to whom disclosure is reasonably necessary for this Action;

16 (c) Experts of the Receiving Party to whom disclosure is reasonably necessary for
17 this Action and who have signed the “Acknowledgment and Agreement to Be Bound”
18 (Exhibit A), which shall be maintained by the Receiving Party and disclosed to the Court
19 only in the event of a notice of breach of this Stipulated Protective Order to maintain the
20 confidentiality of undisclosed consultants;

21 (d) The Court and its personnel;

22 (e) Court reporters and their staff;

23 (f) Professional jury or trial consultants, mock jurors, and Professional Vendors
24 to whom disclosure is reasonably necessary or this Action and who have signed the
25 “Acknowledgment and Agreement to be Bound” (Exhibit A);

26 (g) The author or recipient of a document containing the information or a
27 custodian or other person who otherwise possessed or knew the information;

28 (h) During their depositions, witnesses in the Action who are or were employed

1 by a Party to whom disclosure is reasonably necessary and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (i) Any mediator or settlement officer, and their supporting personnel, mutually
4 agreed upon by any of the parties engaged in settlement discussions; and

5 (j) plaintiff in the Action, to the extent the plaintiff elects to be present for any
6 deposition, to the extent the protected document is used at the deposition, and who has
7 signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A).

8 8.3. Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
9 Information or Items.

10 Unless otherwise ordered by the Court or permitted in writing by the Designating
11 Party, a Receiving Party may disclose any information or item designated “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

13 (a) the Receiving Party’s Outside Counsel of Record in the Action, as well as
14 employees of said Outside Counsel of Record to whom it is reasonably necessary to
15 disclose the information for purposes of this Action;

16 (b) In-House Counsel of the Receiving Party to whom disclosure is reasonably
17 necessary for purposes of this Action and who have signed the “Acknowledgement and
18 Agreement to Be Bound” (Exhibit A), that has been designated to receive such
19 information or item (“Designated In-House Counsel”) and as to whom the Designating
20 Party does not object to disclosure, in accordance with Section 8.4 below;

21 (c) Experts of the Receiving Party to whom disclosure is reasonably necessary for
22 this Action and who have signed the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A), which shall be maintained by the Receiving Party and disclosed to the Court
24 only in the event of a notice of breach of this Stipulated Protective Order to maintain the
25 confidentiality of undisclosed consultants;

26 (d) The Court and its personnel;

27 (e) Court reporters and their staff;

28 (f) Professional jury or trial consultants, and Professional Vendors to whom

1 disclosure is reasonably necessary for this Action and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

3 (g) The author or recipient of a document containing the information.

4 8.4. Procedures for Requesting Disclosure of Information or Items Designated
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

6 (a) A Party that makes a request and provides the information specified in the
7 preceding paragraphs may disclose the subject Protected Material to the identified
8 Designated In-House Counsel or a Designated Plaintiff Representative after seven (7)
9 business days of making the request and providing the required information
10 (collectively, the “Request Date”) unless, within five (f) business days of the Request
11 Date, the Party receives a written objection from the Designating Party setting forth the
12 grounds on which the objection is based.

13 (b) A Party that receives a timely written objection must meet and confer with the
14 Designating Party on an informal basis in accordance with Civil Local Rule 37.1 to try
15 to resolve the matter by agreement within seven (7) days of the written objection. If the
16 dispute is not resolved during the meet and confer, the parties must comply with Judge
17 Audero’s Procedures, in seeking potential relief from the Court.

18 9. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
19 **IN OTHER LITIGATION**

20 If a Party is served with a subpoena or a court order issued in other litigation that
21 compels disclosure of any information or items designated in this Action as
22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
23 that Party must:

24 (a) Promptly notify in writing the Designating Party. Such notification shall
25 include a copy of the subpoena or court order;

26 (b) Promptly notify in writing the party who caused the subpoena or order to issue
27 in the other litigation that some or all of the material covered by the subpoena or order
28 is subject to this Stipulated Protective Order. Such notification shall include a copy of

1 this Stipulated Protective Order;

2 (c) Cooperate with respect to all reasonable procedures sought to be pursued by
3 the Designating Party whose Protected Material may be affected; and

4 (d) Counsel shall take all other reasonable steps to ensure that persons receiving
5 Protected Material do not use or disclose such information for any purpose other than
6 for the purpose stated in the subpoena or court order in that specific litigation.

7 If the Designating Party timely seeks a protective order, the Party served with the
8 subpoena or court order shall not produce any information designated in this action as
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
10 before a determination by the Court from which the subpoena or order issued, unless the
11 Party has obtained the Designating Party’s permission. The Designating Party shall bear
12 the burden and expense of seeking protection in that court of its confidential material
13 and nothing in these provisions should be construed as authorizing or encouraging a
14 Receiving Party in this Action to disobey a lawful directive from another court.

15 **10. A NONPARTY’S PROTECTED MATERIAL SOUGHT TO BE**
16 **PRODUCED IN THIS LITIGATION**

17 10.1. Application.

18 The terms of this Stipulated Protective Order are applicable to information
19 produced by a Nonparty in this Action and designated as “CONFIDENTIAL” or
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information
21 produced by Nonparties in connection with this litigation is protected by the remedies
22 and relief provided by this Stipulated Protective Order. Nothing in these provisions
23 should be construed as prohibiting a Nonparty from seeking additional protections.

24 10.2. Service of Order with Non-Party Discovery Request. The Party issuing any
25 subpoena or other discovery request on any Non-Party in this Action shall include with
26 any such subpoena or discovery request a copy of this Stipulated Protective Order.

27 10.3. Notification.

28 In the event that a Party is required, by a valid discovery request, to produce a

1 Nonparty's confidential information in its possession, and the Party is subject to an
 2 agreement with the Nonparty not to produce the Nonparty's confidential information,
 3 then the Party shall:

4 (a) Promptly notify in writing the Requesting Party and the Nonparty that some
 5 or all of the information requested is subject to a confidentiality agreement with a
 6 Nonparty;

7 (b) Promptly provide the Nonparty with a copy of the Stipulated Protective Order
 8 in this Action, the relevant discovery request(s), and a reasonably specific description of
 9 the information requested; and

10 (c) Make the information requested available for inspection by the Nonparty, if
 11 requested.

12 10.4. Conditions of Production.

13 **11.** If the Nonparty fails to seek a protective order from this Court within
 14 fourteen (14) days after receiving the notice and accompanying information, the
 15 Party that received the discovery request may produce the Nonparty's confidential
 16 information responsive to the discovery request. If the Nonparty timely seeks a
 17 protective order, the Party that received the discovery request shall not produce
 18 any information in its possession or control that is subject to the confidentiality
 19 agreement with the Nonparty before a determination by the Court. Absent a court
 20 order to the contrary, the Nonparty shall bear the burden and expense of seeking
 21 protection in this Court of its Protected Material. **UNAUTHORIZED**

22 **DISCLOSURE OF PROTECTED MATERIAL**

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 24 Protected Material to any person or in any circumstance not authorized under this
 25 Stipulated Protective Order, the Receiving Party immediately must (1) notify in writing
 26 the Designating Party of the unauthorized disclosures, (2) use its best efforts to retrieve
 27 all unauthorized copies of the Protected Material, (3) inform the person or persons to
 28 whom unauthorized disclosures were made of all the terms of this Stipulated Protective

1 Order, and (4) request such person or persons to execute the “Acknowledgment and
2 Agreement to be Bound” (Exhibit A).

3 **12. NOTIFICATION IN THE EVENT OF A SECURITY BREACH OR**
4 **UNAUTHORIZED ACCESS TO PRODUCED MATERIAL**

5 If the Receiving Party discovers any loss of Protective Material or a breach of
6 security, including any actual or suspected unauthorized access, relating to the
7 produced Protected Material, the Receiving Party shall:

8 (a) Promptly provide written notice to Producing Party of such breach within
9 twenty-four (24) hours of the breach discovery.

10 (b) Investigate and make reasonable efforts to remediate the effects of the
11 breach, and provide Producing Party with assurances that such breach shall not recur.

12 (c) Provide sufficient information about the breach that the Producing Party can
13 reasonably ascertain the size and scope of the breach. The Receiving Party agrees to
14 cooperate with the Producing Party or law enforcement in investigating any such
15 security incident.

16 (d) The Receiving Party shall promptly take all necessary and appropriate
17 corrective action to terminate the unauthorized access and/or correct the breach.

18 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
19 **PROTECTED MATERIAL**

20 Nothing in this Stipulated Protective Order shall be construed to prohibit a
21 Producing Party from seeking relief from any inadvertent or unintentional disclosure of
22 confidential, privileged, or work-product information. Nothing in this Stipulated
23 Protective Order shall diminish the legal rights of any person seeking such relief. When
24 a Producing Party gives notice to Receiving Parties that certain inadvertently produced
25 material is subject to a claim of privilege or other protection, the obligations of the
26 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
27 Pursuant to Federal Rule of Evidence 502(d), neither the attorney-client privilege nor
28 the work product protection is waived by inadvertent production in this Action or any

1 other action. This Stipulated Protective Order shall be interpreted to provide the
2 maximum protection allowed by Federal Rule of Evidence 502(e).

3 **14. MISCELLANEOUS**

4 14.1. Right to Further Relief and Modification by the Court.

5 Nothing in this Stipulated Protective Order abridges the right of any person to
6 seek its modification by the Court in the future.

7 14.2. Right to Assert Other Objections.

8 By stipulating to the entry of this Stipulated Protective Order, no Party waives
9 any right it otherwise would have to object to disclosing or producing any information
10 or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
11 Party waives any right to object on any ground to use in evidence of any of the material
12 covered by this Stipulated Protective Order.

13 14.3. Filing Protected Material.

14 Before any materials produced in discovery, answers to interrogatories, responses
15 to requests for admissions, deposition transcripts, or other documents which are
16 designated as Protected Material are filed with the Court for any purpose, the party
17 seeking to file such material must seek permission of the Court to file the material under
18 seal. No document may be filed under seal, i.e., closed to inspection by the public except
19 pursuant to a Court order that authorizes the sealing of the particular document, or
20 portions of it. A sealing order may issue only upon a showing that the information is
21 privileged or protectable under the law. The request must be narrowly tailored to seek
22 sealing only of the confidential or privileged material. To file a document under seal,
23 the Parties must comply with the procedures explained in Civil Local Rule 79-5.

24 The Parties agree to the following procedure before filing a motion to seal
25 Protected Material:

26 (a) A Party wishing to use any Protected Material designated by another Party as
27 Confidential or Highly Confidential will provide a list of all such documents to the
28 designating party seven (7) days prior to the filing due date and request that the Protected

1 Material and any reference thereto not be filed under seal.

2 (b) If a Party identifies one or more designated document that it intends to file less
3 than seven (7) days prior to the filing due date, the Party shall notify the Designating
4 Party immediately upon that determination and request that the Protected Material and
5 any reference thereto not be filed under seal. If the Party does not, at least forty-eight
6 (48) hours prior to the filing due date, identify the designated document and request that
7 the Protected Material and any reference thereto not be filed under seal, then the Party
8 must file a motion to seal the designated document and any reference to the Protected
9 Material pursuant to the Court's procedures.

10 (c) If the Designating Party agrees in writing that the designated material need not be
11 filed under seal, the Protected Material may be filed in the public docket. If the
12 Designating Party does not agree in writing that the Protected Material may be filed in
13 the public docket, then the Party wishing to use such Protected Material must file a
14 motion to seal the Protected Material, including any designated documents and any
15 reference to the Protected Material, pursuant to the Court's procedures. 14.4.

16 Right of a Party to Use Its Own Documents. Nothing in this Stipulated Protective Order
17 shall affect a Party's use or disclosure of its own documents in any way.

18 14.5. Right of a Party to Use Independently Obtained Documents. Nothing in this
19 Stipulated Protective Order shall impose any restrictions on the use or disclosure by a
20 Party of documents, material or information obtained by such Party independent of
21 formal discovery proceedings in this Action.

22 14.6. Right to Supplement or Request Deletion. If during the course of litigation,
23 a data subject with privacy rights pursuant to the Data Protection Laws identified herein
24 exercises his or her right to erasure of personal data contained within the previously
25 produced Protected Material, the Producing Party shall furnish newly redacted versions
26 of the Protected Material within a reasonable time. The Requesting Party will promptly
27 destroy the original version of the Protected Material and replace it with the redacted
28 version. The Producing Party may also require the entire document destroyed and

1 replaced with a slip-sheet indicating the Protected Material is subject to erasure pursuant
2 to the applicable Data Protection Law.

3 14.7. Personally Identifiable Information. Personally identifiable information that
4 a party has designated as Protected Material as defined herein, based on its good faith
5 belief that the information is subject to federal or state laws or other privacy obligations,
6 or any of the information contained therein, shall be handled by Counsel for the
7 Receiving Party with the highest care.

8 **15. FINAL DISPOSITION**

9 After the final disposition of this Action, within sixty (60) days of a written
10 request by the Designating Party, each Receiving Party must return all Protected
11 Material to the Producing Party or destroy such material. However, the Receiving Party
12 may maintain its notes and coding of the documents produced for use in another action
13 averring the same allegations as this Action against the same defendants in another
14 jurisdiction until such time as all actions pending in other jurisdictions reach final
15 disposition. As used in this subdivision, "all Protected Material" includes all copies,
16 abstracts, compilations, summaries, and any other format reproducing or capturing any
17 of the Protected Material. Whether the Protected Material is returned or destroyed, the
18 Receiving Party must submit a written certification to the Producing Party (and, if not
19 the same person or entity, to the Designating Party) by the 60-day deadline that (1)
20 identifies (by category, where appropriate) all the Protected Material that was returned
21 or destroyed and (2) affirms that the Receiving Party has not retained any copies,
22 abstracts, compilations, summaries or any other format reproducing or capturing any of
23 the Protected Material. Notwithstanding this provision, Counsel is entitled to retain an
24 archival copy of all pleadings; motion papers; trial, deposition, and hearing transcripts;
25 legal memoranda; correspondence; deposition and trial exhibits; expert reports; attorney
26 work product; and consultant and expert work product, even if such materials contain
27 Protected Material. Any such archival copies that contain or constitute Protected
28 Material remain subject to this Stipulated Protective Order as set forth in Section 5.

1 **16. VIOLATION**

2 Any violation of this Stipulated Order may be punished by any and all appropriate
3 measures including, without limitation, contempt proceedings and/or monetary
4 sanctions.

5 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

6 Dated: _____, 2023

7 _____
8 Lynne Kizis, (*Pro Hac Vice*)
9 Kevin P. Roddy, SBN 128283
10 WILENTZ, GOLDMAN & SPITZER
11 90 Woodbridge Center Drive, Suite 900
12 Woodbridge, NJ 07095
13 Tel: (732) 636-8000
14 lkizis@wilentz.com kroddy@wilentz.com

15 _____
16 Kimberly Beck (*Pro Hac Vice*)
17 BECK LAW CENTER
18 201 E. 5th Street, Suite 1900
19 Cincinnati, OH 45202
20 (888) 434-2912
21 kim@becklawcenter.com

22 _____
23 Shehnaz M. Bhujwala, SBN 223484
24 BOUCHER LLP
25 21600 Oxnard Street, Suite 600
26 Woodland Hills, CA 91367-4903
27 (818) 340-5400
28 bhujwala@boucher.la

Attorneys for Plaintiff

23 Dated: _____, 2023

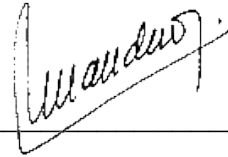
24 _____
25 Alexander G. Calfo, SBN 152891
26 Susan V. Vargas, SBN 177972
27 Amy P. Zumsteg, SBN 260242
28 KING & SPALDING LLP
633 West Fifth Street, Suite 1600
Los Angeles, CA 90071

213.443.4355
acalfo@kslaw.com
svargas@kslaw.com
jromano@kslaw.com
azumsteg@kslaw.com

Attorneys for Defendants

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: April 18, 2023



Hon. Maria A. Audero
United States Magistrate Judge

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [full name], of _____ [address],
 declare under penalty of perjury that I have read in its entirety and understand the
 Stipulated Protective Order that was issued by the United States District Court for the
 Central District of California on _____ [date] in the case of *James Cruz v.*
Merck & Co., Inc., et al., Case No. 2:22-cv-02348 DMG (MAAx). I agree to comply
 with and to be bound by all the terms of this Stipulated Protective Order, and I
 understand and acknowledge that failure to so comply could expose me to sanctions and
 punishment in the nature of contempt. I solemnly promise that I will not disclose in any
 manner any information or item that is subject to this Stipulated Protective Order to any
 person or entity except in strict compliance with the provisions of this Stipulated
 Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for
 the Central District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this
 action. I hereby appoint _____ [full name] of
 _____ [address and telephone number]
 as my California agent for service of process in connection with this action or any
 proceedings related to enforcement of this Stipulated Protective Order.

Signature: _____

Printed Name: _____

Date: _____

City and State Where Sworn and Signed: _____